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September 15, 2014

VIA ELECTRONIC & US MAIL

Ms. Jennifer LaPoma
ATTN: Lower Passaic River Remedial Project Manager
Emergency and Remedial Response Division
U.S. EPA, Region 2
290 Broadway, 19th Floor
New York, New York 10007

Re: Monthly Progress Report No. 88 – August 2014
Lower Passaic River Study Area (LPRSA) Remedial Investigation/Feasibility Study
(RI/FS)
CERCLA Docket No. 02-2007-2009

Dear Ms. LaPoma:

de maximis, inc. is submitting this Monthly Progress Report for the above-captioned project on the behalf of the RI/FS Agreement Settling Parties (Cooperative Parties Group or CPG) pursuant to the Administrative Settlement Agreement and Order on Consent (Settlement Agreement or AOC). The Progress Report satisfies the reporting requirements of Paragraph 42 of said Settlement Agreement.

(a) Actions which have been taken to comply with this Settlement Agreement during the previous month.

Meetings/Conference Calls

None

Correspondence

- On August 4, EPA requested CPG provide the GIS layers used for preparing figure ES-1 from the Draft Baseline Ecological Risk Assessment (BERA).
- On August 4, CPG informed EPA that the blank pages in the Screening-Level Ecological Risk Assessment (SLERA) were intentionally blank so that a new section did not start on the backside of a page or because they were the backside of 11 X 17 inch figures.
- On August 5, CPG provided the GIS layers/shape files used in preparing Figure ES-1 in the BERA.
- On August 5, EPA requested the status of the Background Tissue Sample Summary Report from the CPG.
- On August 6, EPA responded to CPG's letter dated July 18, 2014 regarding the status of modeling activities and requested the submittal of various maps.
- On August 11, CPG informed EPA that CPG would be submitting the updated COPC maps the week of August 11 instead of the week of August 18 as previously planned.



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- On August 11, CPG submitted the third revision of the 17-mile LPRSA Feasibility Study (FS) Work Plan first submitted in August 2008 and Response to Comments to EPA.
- On August 12, the CPG notified EPA that the updated COPC maps had been posted and provided download access information to the EPA contractor.
- On August 13, 14, 18 and 19 EPA and CPG exchanged emails to set up a conference call to review COPC maps.
- On August 15, CPG submitted the July Monthly Progress Report to EPA.
- On August 20, CPG provided in response to EPA's August 6 letter information regarding the status of modeling information to EPA.
- On August 20, CPG submitted the Sediment Transport Model memorandum to EPA.
- On August 20, EPA contractor requested shapefiles of the data used to develop COPC maps from the CPG contractor.
- On August 25, EPA submitted a letter to CPG regarding the status of data collection activities for the Newark Bay Study Area (NBSA), directing CPG to submit code and inputs for the NBSA portion of the models by January 15, 2015.
- On August 29, EPA provided comments on the Draft Interim LPRSA RI/FS Conceptual Site Model (CSM) submitted to EPA for discussion purposes on December 20, 2013.

Work

- CPG continued drafting the Low Resolution Coring, Supplemental Sampling Program #2 (SSP2) Characterization Summary.
- CPG continued responding to EPA comments on previously submitted RI/FS deliverables.
- CPG Modeling Team continued work on the RCATOX Chemical Fate and Transport Model Code initial conditions and long-term calibration runs.
- CPG Modeling Team continued work on the Bioaccumulation Model.
- CPG continued review of sediment characteristics and potential target remedy locations in support of initial FS evaluations.
- CPG continued development of appendices and supporting documents for the FS.
- CPG continued development of the Remedial Investigation (RI) report.
- CPG continued responding to EPA comments received on previously submitted RI/FS deliverables including the LRC SSP Characterization Summary and Small Volume and High Volume CWCM Program Characterization Summaries.

(b) Results of Sampling and Tests

None.

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(c) Work planned for the next two months with schedules relating to the overall project schedule for RI/FS completion

- CPG will complete drafting the SSP2 Characterization Summary.
- CPG will continue responding to EPA comments on previously submitted RI/FS deliverables.
- CPG will prepare a response to EPA's comments on the Draft Interim CSM.
- CPG Modeling Team will continue calibration runs with the HQI ECOM-SEDZLJS and RCATOX codes and inputs.
- CPG Modeling Team will continue development of the Bioaccumulation Model.
- CPG's Modeling team will participate in 17-mile LPRSA Modeling calls with EPA and EPA consultants as required.
- CPG will continue drafting the RI Report.
- CPG will continue initial FS evaluation of targeted remedy locations.
- CPG will continue development of appendices and supporting documents for the FS.

(d) <u>Problems encountered and anticipated problems, actual or anticipated delays, and solutions developed and implemented to address actual or anticipated problems or delays.</u>

 On October 23 2013, Region 2 provided a letter which purports to provide their understanding of the modeling being conducted by the CPG in support of the Sustainable Remedy (SR) and RI/FS. The CPG did not agree with some of the statements made in this letter and provided a response on November 22, 2013. The CPG received a response to its November 22, 2013 letter from the Region on April 1, 2014. The CPG does not agree with the responses and positions taken by the Region in this letter.

A meeting was conducted on November 14, 2013 to brief Region 2 on the working version of the LPR/NB Model used for the evaluation of the SR. The November 14, 2013 meeting addressed OSRTI's July 24, 2013 request that Region 2 understand the modeling conducted by the CPG. The CPG agreed with Region 2's proposal to conduct routine and regular oversight meetings of the development of the LPR/NB Model for the LPRSA RI/FS with the Region.

The CPG participated in modeling oversight meetings with USEPA on February 13, 2014 and March 13, 2014. The CPG declined to participate in the scheduled April 10, 2014 oversight meeting when Region 2 stipulated a requirement that Tierra/Maxus/Occidental (TMO) participate in the April 10 meeting and future modeling oversight meetings. The Region also required the CPG to provide its work materials to TMO in advance of the April 10 meeting, which the CPG declined to do since TMO is no longer a member of the CPG and is no longer contributing to the costs of the LPRSA RI/FS.

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On December 19 and 20, 2013, the CPG provided (1) the following modeling information used in its working version of the LPR/NB Model to evaluate targeted and bank to bank remedies that was requested as a result of the December 9, 2013 EPA HQ-CPG meeting to Region 2 and (2) requested that EPA provide its latest modeling code and associated material to the CPG. The CPG provided the following:

- The hydrodynamic model inputs/outputs and linkage files for the calibration period WY1995-WY2012
- The sediment transport inputs/outputs for the calibration period WY1995-WY2012
- Code version used for sediment transport calibration runs
- OC linkage program, script to pre-process inputs and develop OC linkage file, and example OC linkage file for WY1996
- CFT model inputs, outputs (zipped) and run scripts for the 45 years projection period for 2,3,7,8-TCDD for requested projection alternatives:
 - o Alt 1: MNR
 - o Alt 2: Targeted removal (500 ppt) (this is the same as Alt 2a)
 - o Alt 3: Cap/Dredge with EPA schedule
 - o Alt 4: Full dredge with EPA schedule
 - o Alt 5: Cap/Dredge with realistic schedule
 - o Alt 6: Full dredge with realistic schedule
- CFT model inputs, outputs and run procedures for the long-term (WY1995-WY2009) and short-term (WY2010-WY2012) calibration periods for 2,3,7,8-TCDD, for the same model version as used in the above projections
- The RCATOX model code version used in all of the above simulations
- Temporal plots of the mean 0-15 cm sediment 2,3,7,8-TCDD concentrations for RM 0-8 and RM 0-17 as shown in the July EPA-HQ meeting
 - As noted during the November 14 EPA/CPG modeling meeting, Alternatives 1, 2, and 5 were re-run in October due to an input error in the dredging schedule implementation. The updated results are shown on these plots
- Bioaccumulation Model Template Steady State
- Bioaccumulation Model Template Dynamic
- Dynamic Bioaccumulation Model Input Template

The model codes, inputs and outputs are consistent with the model version described in the November 14, 2013 modeling meeting, and shown during the December EPA-HQ meeting. The above-referenced modeling information provided EPA a detailed understanding of the work being conducted by the CPG as it pertains to the LPRSA RI/FS and its development of the Sustainable Remedy. The CPG did not receive the EPA modeling codes, input files and other information that it requested on December 20, 2013 and January 3, 2014 until March 12, 2014.

Region 2 has initiated several recent directives to provide modeling code, COPC maps, input and output files for work as yet uncompleted. On July 2, the Region directed the

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CPG to provide a number of items by July 18. On July 18, the CPG provided a proposed schedule for providing the identified by Region 2. As part of that response, the CPG provided the 17-mile LPRSA RI/FS updated sediment transport model, input and output files on July 31. The CPG provided COPC maps for 2,3,7,8-TCDD, Tetra-PCBs and Mercury on August 12. The CPG also provided a technical memorandum on the revised sediment transport model on August 20.

In addition, the Region directed on July 24 that the CPG provide a schedule by July 28 for the completion of the Newark Bay model. As noted in the CPG's July 28 response, the CPG cannot provide a schedule for completing a model for the Newark Bay RI/FS until data collection is completed. Region 2 provided a response that directed the CPG complete and submit modeling codes and input files for Newark Bay by January 15, 2015. As the EPA and its modeling team have experienced in its development of the 8-mi FFS model between 2007 and 2014, the satisfactory completion of these models are complicated and arbitrary deadlines may not be possible to attain.

Region 2 provided comments on July 11, 2011 which disapproved the revised risk assessment planning documents and required submission of revised documents within 30 days. Additionally, Region 2 provided a technical memo on July 25, 2011 on fish and crab consumption rates for the LPRSA Human Health Risk Assessment. The CPG filed a notice of dispute resolution in accordance with Section XV of the AOC on July 25. 2011 in response to Region's July 11, 2011 directive letter and July 25, 2011 technical memorandum. The revised RARC and TRV deliverables were submitted on August 9. 2011. On September 6, 2011 the CPG submitted a position paper in response to EPA's July 11, 2011 comments and July 25, 2011 technical memorandum. Dispute resolution meetings were held on December 1, 2011 and January 13, 2012. Region 2 provided the results of the dispute resolution to the CPG on February 7, 2012 and the CPG implemented the changes specified in the July 2011 directive comments and the results of the dispute resolution in the revised RARC which was submitted on April 13, 2012. Region 2 provided comments on the revised RARC on August 30, 2012; the CPG met with Region 2 on January 7, 2013 to discuss remaining background and reference issues and had a telephone call with EPA on January 28 to discuss cooking loss.

Background and reference definitions were received by the CPG on June 28, 2013. It is the CPG's understanding that the issuance of the revised definitions was held-up by the NJDEP, NOAA and US FWS which did not accept definitions that were otherwise acceptable to the Region and the USACOE, and which appeared to be acceptable to the CPG based on the CPG's understanding of the revised definitions. Following CPG review and discussions and clarifications with the Region on August 8, the CPG resubmitted the revised final RARC, incorporating the June 28 definitions, on October 29 to Region 2 for final approval. The CPG received additional RARC comments on January 31, 2014, and the CPG is currently responding to these comments.

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> During a December 3, 2013 telephone conversation and a January 29, 2014 EPA-CPG RI/FS meeting, the Region indicated that it was doing an internal review to establish reference conditions in order to standardize identification and use of reference sites within the Region. The EPA strongly implied in both conversations that the results of this work would be shared with the CPG. In an email dated March 26, EPA suggested that the background and reference approach previously discussed would not change and the CPG should submit the BERA prior to final resolution of the background reference analysis. Moreover, the Region stated that it would comment and address the outstanding reference issue during its review of the BERA and HHRA. Region 2 provided NOAA's proposed reference approach on May 27, 2014 and conducted a teleconference with the CPG on May 29. The CPG expressed its concerns with the NOAA approach and the fact that it is inconsistent with EPA's guidance for developing reference conditions as well as the discussions between the CPG and EPA since 2011. The reference condition approach developed based on EPA and CPG discussions since 2011 will presented in the draft BERA submitted by the CPG. The CPG submitted the draft LPRSA BHHRA on June 6, 2014 and the draft LPRSA BERA on June 13, 2014.

> In addition, the risk assessments prepared as part of the FFS and Proposed Plan for the lower 8 miles do not conform to the Region 2-approved Problem Formulation Document (PFD) for the 17-mile LPRSA RI/FS. Due to the overlapping nature of the lower 8-mile study area and the 17-mile LPRSA, the CPG is currently reviewing both documents to understand the differences between the Region's document and the BERA being prepared for the RI/FS by the CPG. Moreover, the NRRB's April 11, 2014 comments on the Region's ecological risk assessment, amplify that there are fundamental and significant differences between the work that CPG was directed to do by Region 2 and what the Region did in preparing its ecological risk assessment for the Proposed Plan for the lower 8-miles. The CPG has addressed a number of its concerns regarding the EPA directives on the BHHRA and BERA in its transmittal letters accompanying the draft documents.

• The CPG was directed in 2009 by EPA to develop a single QAPP for surface water sampling for both the LPRSA and NBSA. At that time, the TMO parties were still members; the TMO parties left the CPG in May 2012. However, Occidental is the respondent to the NBSA AOC. The CPG followed the direction of the EPA and performed three separate programs, including developing QAPPs for the Physical Water Column Monitoring and Small Volume and High Volume Chemical Water Column Monitoring programs (in fact the High Volume program was implemented after TMOs departure). The CPG voiced its concerns to EPA that this involved both (1) different operable units of the Diamond Alkali NPL site and (2) different respondents to the respective AOCs - EPA did not address the CPG's concerns. In order to effectuate EPA's directive for synoptic sampling in the River and Newark Bay, the CPG agreed to allow Tierra, on behalf of Occidental, to use the CPG's contractor. However, subject to the terms of a letter agreement between the CPG and Tierra, the responsibility for the work in Newark Bay would be solely Tierra's. After authorizing and paying for Newark

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Bay work, Tierra stopped responding to the CPG's contractor task authorization requests starting in March 2013 and has not made any payments since mid-May 2013. As a result of Tierra's failure to pay, the CPG's contractor is owed over \$1 MM in outstanding invoices and an estimated \$1.5 MM in labor and expenses associated with NBSA sampling (for a total of \$2.5 MM). In August 2013, with EPA's approval, the CPG paid over \$1 MM in outstanding invoices from the LPRSA Trust. Until the remaining invoices are paid and the CPG is compensated for its payment, the CPG and its contractor will not provide any NBSA data to TMO and believes that EPA should take the same position.

- On March 3, 2009, pursuant to EPA's November 13, 2008 comments provided to CPG, a revision to the August 2008 Feasibility Study Work Plan (17-mile FSWP) was submitted. The CPG received comments on December 13, 2013 and met with EPA on December 17, 2013. The CPG submitted a revised 17-mile FSWP on January 31, 2014. EPA provided comments on April 3, 2014 for the revised 17-mile FSWP and the CPG is preparing a response to comments and revising the 17-mile FSWP. The CPG provided its third revision to the 17-mile FSWP on August 11.
- There are number of data summary reports and technical memos (both original and revised submissions) that have been submitted to Region since 2011 that the CPG is awaiting either approval or Region 2's comments. These reports include:
 - Lower Passaic River Surface Sediment Concentration Mapping Technical Memorandum – submitted May 2013
 - 2. Upstream Reference Benthic Data Report submitted August 2013
 - 3. Background Sediment Data Report submitted October 2013

The CPG has received the Region's comments on a number of previously submitted reports and is in the process of addressing revising and resubmitting these reports. Please advise the CPG of the Region 2's schedule for action on these remaining documents.

If you have any questions, please contact me or Rob Law at (908) 735-9315.

Very truly yours,

de maximis, inc.

CPG Project Coordinator

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cc: Stephanie Vaughn, EPA

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